

5 Pages

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**08-02562-A**

COMPLAINT

PLAINTIFF: CHARLES WADE  
 DEFENDANT: DAVID CLARK  
 JUDGE: HON. M. MCMANUS  
 RELATED CASE: 08-29554

FILED 10/14/08 - 9:12 AM  
 CLERK, U.S. BANKRUPTCY COURT  
 EASTERN DISTRICT OF CALIFORNIA  
 SACRAMENTO DIVISION dnes  
 RECEIPT NO: 2-B-026107 \$250.00



2008-02562

541

IN THE UNITED STATES BANKRUPTCY COURT  
 IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA  
 SACRAMENTO DIVISION

In re THE BANKRUPT ESTATE OF:	}	Case No.: 08-29554-A-7
DAVID CLARK,	}	Adversary Case No.
Debtor.	}	
CHARLES WADE,	)	COMPLAINT FOR NON-
Plaintiff,	)	DISCHARGEABILITY OF DEBT
v.	)	AND FOR FRAUD PURSUANT TO
DAVID CLARK,	)	11 U.S.C. 523(a)(2)(A)
Defendant.	)	

Plaintiff alleges against Defendant as follows:

1       1. This Court has jurisdiction as Defendant David Clark (hereinafter referred to as  
2 "Defendant") has filed for relief in the Bankruptcy Court in the Eastern District of California,  
3 Sacramento Division in Case Number 08-29554-A-7.

4       2. On the date of the filing of the petition in bankruptcy herein, Plaintiff was, and is now,  
5 a creditor of Defendant holding a claim provable in this proceeding.

6       3. This complaint to the discharge of Defendant commences an adversary proceeding  
7 within the meaning of Bankruptcy Rule 7001, and is a core action pursuant to 28 U.S.C.  
8 §157(b)(2)(I).

9       4. Plaintiff is a resident of the County of Sacramento.

10      5. Defendant David Clark is a resident of the County of Sacramento.

11      6. On January 27, 2005, Plaintiff loaned Defendant David Clark forty thousand dollars  
12 (\$40,000.00). As part of the oral agreement, Defendant Clark agreed repay Plaintiff at the  
13 maximum rate of interest within one year of date of the delivery of Plaintiff's money.

14      7. In reliance on such agreement, on January 27, 2005, Plaintiff delivered a check for  
15 forty thousand dollars (\$40,000.00) to Defendant Clark.

16      8. On or about January 27, 2005, Defendant Clark endorsed such check and took  
17 possession of Plaintiff's forty thousand dollars.

18      9. Since January 27, 2005, Defendant Clark has made no effort to repay Plaintiff forty  
19 thousand dollars or any amount or portion thereof.

20      10. On August 10, 2006, Plaintiff caused his lawyer Philip Cozens to demand from  
21 Defendant Clark the repayment of such funds. But Defendant Clark failed to make any  
22 arrangements for the repayment of such money.

1           11. On April 1, 2005, Plaintiff loaned Defendant David Clark eighty thousand dollars  
2           (\$80,000.00). As part of the oral agreement, Defendant Clark agreed repay Plaintiff at the  
3           maximum rate of interest within one year of date of the delivery of Plaintiff's money.

4           12. In reliance on such agreement, on April 1, 2005, Plaintiff delivered a check for  
5           eighty thousand dollars (\$80,000.00) to Defendant Clark.  
6

7           13. On or about April 4, 2005, Defendant Clark endorsed such check and took  
8           possession of Plaintiff's eighty thousand dollars.  
9

10          14. Since April 1, 2005, Defendant Clark has made no effort to repay Plaintiff eighty  
11           thousand dollars or any amount or portion thereof.  
12

13          15. On August 10, 2006, Plaintiff caused his lawyer Philip Cozens to demand from  
14           Defendant Clark the repayment of such funds. But Defendant Clark failed to make any  
15           arrangements for the repayment of such money.  
16

17          16. Defendant Clark has converted such property to his own use and has no intention of  
18           repaying Plaintiff. At the time of such conversion, Defendant Clark knew such money belonged  
19           to Plaintiff, but maliciously and oppressively decided not to pay Plaintiff. The acts of Defendant  
20           as stated above, provide a basis for Plaintiff to obtain a judgment for nondischargeability  
21           pursuant to 11 U.S.C. 523(a)(2) (A) in that Defendant used false pretenses, a false representation,  
22           or actual fraud other than a statement respecting Defendant's or an insider's financial condition to  
23           obtain services, money, or an extension, renewal, or refinancing of credit from Plaintiff.  
24

## **SECOND CAUSE OF ACTION**

### **(For Fraud)**

25          26. Plaintiff re-alleges the allegations contained in paragraphs one through sixteen and  
27           by this reference incorporates such allegations herein as though fully set forth.  
28

1           18. On January 27, 2005, Defendant Clark promised that if Plaintiff loaned forty  
2 thousand to Defendant Clark, that Defendant Clark would repay such money with interest at the  
3 legal rate within one year of the loan.

4           19. At the time of making such promise, Defendant Clark secretly did not intend to repay  
5 Plaintiff and did not intend to perform on his promise.  
6

7           20. Defendant Clark made the promise to repay to induce Plaintiff to rely on the promise  
8 to repay and to induce Plaintiff to lend money to Defendant Clark.  
9

10          21. Plaintiff actually relied on Defendant Clark's promise to repay with interest. Such  
11 reliance was reasonable at the time.  
12

13          22. Based on his reliance on Defendant Clark's promise to repay, Plaintiff loaned forty  
14 thousand dollars to Defendant Clark.  
15

16          23. On April 1, 2005, Defendant Clark promised that if Plaintiff loaned eighty thousand  
17 to Defendant Clark, that Defendant Clark would repay such money with interest at the legal rate  
18 within one year of the loan.  
19

20          24. At the time of making such promise, Defendant Clark secretly did not intend to repay  
21 Plaintiff and did not intend to perform on his promise.  
22

23          25. Defendant Clark made the promise to repay to induce Plaintiff to rely on the promise  
24 to repay and to induce Plaintiff to lend money to Defendant Clark.  
25

26          26. Plaintiff actually relied on Defendant Clark's promise to repay with interest. Such  
27 reliance was reasonable at the time.  
28

29          27. Based on his reliance on Defendant Clark's promise to repay, Plaintiff loaned eighty  
30 thousand dollars to Defendant Clark.  
31

1           28. As of September 29, 2006, Defendant Clark has made no effort to repay forty  
2 thousand dollars, or eighty thousand dollars or any amount of money.

3           29. Defendant Clark committed the act alleged herein maliciously to gain Plaintiff's  
4 money with no intention of repaying such money and with the wrongful intention of defrauding  
5 Plaintiff of his money. In addition to a judgment for the return of his money, Plaintiff is entitled  
6 to punitive damages in an amount not less than \$100,000.00  
7

8           30. 11. The acts of Defendant as stated above, provide a basis for Plaintiff to obtain a  
9 judgment for nondischargeability pursuant to 11 U.S.C. 523(a)(2)(A) in that Defendant used  
10 false pretenses, a false representation, or actual fraud other than a statement respecting  
11 Defendant's or an insider's financial condition to obtain services, money, or an extension,  
12 renewal, or refinancing of credit from Plaintiff.  
13

14           WHEREFORE, Plaintiff prays for judgment from the court as follows:

15           1. For the repayment of \$120,000.00 Plaintiff loaned to Defendant Clark and interest on  
16 such money;  
17  
18           2. For punitive and exemplary damages in an amount not less than \$100,000.00  
19  
20           3. For costs of suit incurred herein; and  
21  
22           4. For such other, further and different relief as the court deems proper.

Dated October 2, 2008

Respectfully submitted,



Philip Cozens  
Attorney for Plaintiff  
Charles Wade